IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16198 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYED AMIN AKBAR MIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16198 of 2003

MR TUSHAR MEHTA for Petitioner No. 1-9

MR AD OZA GOVERNMENT PLEADER for Respondent No. 1-2

MR JR NANAVATI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: /05/2004

C.A.V. JUDGEMENT

Nine jail inmates of Sabarmati Central Prison, situated at Ahmedabad, have jointly moved this writ

petition invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India with reference to provisions of Articles 14 and 21 of the Constitution of India and have prayed that appropriate writ, direction or order may kindly be issued against the respondents/authorities in terms of relief prayed mainly in sub-paragraphs (B), (C), (D) and (E)(i) in paragraph 16 of the petition.

2 The counsel appearing for the parties are heard in piecemeal as the parties have attempted to clarify their stand qua the dispute raised by the petitioners by filing affidavit and counter affidavit at various stages and have also produced documents in support of their say expressed in the respective affidavits. I have gone through all the affidavits filed and the counsel appearing for the parties have also taken me through the relevant facts stated in the affidavit filed in this matter and they have taken me through the relevant legal provisions as well as the Government Resolutions, Circulars, issued by the State Government and the relevant part of Jail Manual. For brevity and convenience and with a view to appreciate the contentions raised by the parties, it would be proper to quote the relevant part of relief clause referred to hereinabove:-

"(B) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents-Authorities to continue respondent No.3 on the post of Jail Superintendent, Sabarmati Central Prison, till the reformatory process undertaken by him is fully operative, functional and complete.

(C) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction appointing an independent officer to be selected by this Honourable Court with a direction to him to make a personal visit to the Sabarmati Central Prison and make a report and produce the report before this Honourable Court with respect to the conditions of the jail inmates in the Sabarmati Central Prison before and after posting of Respondent No.3.

(D) Your Lordships may be pleased to issue a

writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order dated November 17, 2003, at Annexure -"A";

(E) Pending the hearing and final disposal of the petition, this Honourable Court may be please to -

(i) appoint an indepndent officer to be selected by this Honourable Court with a direction to him to make a personal visit to the Sabarmati Central Prison and make a report and produce the report before this Honourable Court with respect to the conditions of the jail inmates in the Sabarmati Central Prison before and after posting of respondent No.3"

3. The case of the petitioners:

3.1 The case of the present petitioners invoking the extraordinary writ jurisdiction of this Court centers around certain apprehensions and their anxiety to have protection of their fundamental rights guaranteed under Article 14 and 21 of the Constitution of India as under-trial and convicted persons. The backbone of the case is that these rights are sought to be encroached upon by the respondent-authorities with an oblique purpose and for that very purpose the "impugned order" dated 17th November, 2003 is passed whereby respondent no.3, Mr Sanjeev Bhatt, IPS Officer, who was Superintendent Central Prison, Sabarmati, having his office at jail bhavan, Keshavnagar, Sabarmati, Ahmedabad, came to be transferred. By this order of transfer at Annexure-A he was called back by the State Government under the services of Department of Home Affairs and Mr A.B. Makwana, in-charge Deputy Superintendent was directed to take over the charge as Superintendent and to hold the additional charge of the said post till further orders that may be passed by the Home Department. The petitioners nos.1 to 4 and 7 are convicts of various offences whereas petitioners nos.5, 6 and 8 are under-trial prisoners. Petitioners nos.1 to 4 are duly elected representatives by all the inmates undergoing imprisonment in Sabarmati Central Prison and they are members of the Committee constituted as per Rule 1226 of the Bombay Jail Manual, known as "Kedi Panchayat". The jailor and the Superintendent are supposed to consult the Committee in the matter of discipline and those relating

to the general welfare of the prisoners. It is averred that petitioners nos.1 to 4 have filed this writ petition in the representative capacity i.e. on their own behalf and on behalf of all the jail inmates. It is also averred that they are entitled to lead the cause of all inmates undergoing imprisonment approximately 3000 in number, as other big prisons of the country. There are mainly three categories of prisoners in the jail, namely, (a) under-trial prisoners, (b) convicts and (c) detenus under various detention laws and they are all housed in separate yards and areas earmarked for their respective category. The say of the petitioners is that, as held by the Apex Court as well as by this Court in a catena of decisions, the prisoners are also entitled to the fundamental rights guaranteed not only under Article 14 but under Article 21 of the Constitution of India and they should be treated as human beings and mainly with all human dignity. The human rights recognised by law as well as by treaties are exercisable right but, it is an unfortunate experience of all the inmates that they are subjected to subhuman conditions of living. It is contended that all inmates were feeling humiliated with regard to very basic essentials for whom facilities like food, sanitation, barrack conditions, health and medical facilities, legal aid, sports facilities, and the jail inmates were being given less quantity of food than what is normally consumed and even compromising on quality also. But after posting of respondent no.3 as jail superintendent he started taking steps to redress the essential grievance and the persons started receiving palatable food in sufficient quantity which was fit for human consumption. They also experienced a change in attitude of jail staff and functioning of other authorities at various levels working under respondent no.3 as till then certain facilities were available to a chosen few because of rampant corruption at all levels in the jail staff and majority of jail inmates were feeling deprived of basic and essential human conditions which is held to be a concomitant part of Article 21 of the Constitution of India. They found radical change in the medical dispensary situated in the jail and jail hospital was always otherwise grossly inadequate. After resumption of the charge of respondent no.3 Shri Sanjeev Bhatt a marked improvement has taken place in the matter of medical assistance, which was achieved by respondent no.3 by ensuring that necessary drugs are available in the dispensary as the same were not available in the past. A large number of inmates who required specialised medical assistance, which is available only at Government Civil Hospital, were not getting adequate medical treatment and they used to suffer only because of apathy

and indifference of the jail authorities as only selected inmates used to be referred to such medical assistance and Mr Bhatt took corrective steps which ensured the presence of a doctor and doctors were made available for the prisoners in the prison yard itself apart from being in the dispensary. It is averred that most of the inmates are illiterate persons and are coming from poor and backward class of society having no knowledge of law nor having any competent legal assistance. Large number of prisoners and under-trials who were not aware about the status of their matter pending in the respective court or in the higher forum against the orders of conviction were made aware of their respective rights and their right to have parole and furlough. Otherwise, such rights used to get lapse either because of their ignorance about the statutory provisions and the apathy and indifference on the part of the jail authorities. The entire system working in the jail administration in this regard was streamlined by respondent no.3 Mr Bhatt and he assured that each inmate gets competent legal justice within the jail premises itself by requesting some of the jail inmates, who were qualified lawyers before they are arrested or having good legal acumen because of their experience in life, to render immediate legal assistance and for the first time such inmates were made members of legal aid committee. It is further contended that though there is a system of Jail Superintendent taking rounds of the jail, such system was being complied with more in breach and even when they were on rounds there was no accessibility and the process was mainly mechanical. However, Mr Bhatt introduced a system in which he would visit each yard of the prison daily at a particular time and would personally meet each and every inmate and the inmates were feeling free to express their grievances before him and he used to deal with the same either immediately or at the earliest. The personal visit of the Jail Superintendent has brought about a vast change in the jail inmates as well as jail staff and on that count only the health and sanitation conditions in the barrack also improved substantially and the inmates realised that the system of taking rounds of each and every yard compulsorily has brought reformation. The say of the petitioners is that they are unable to give any illustrative details about the large number of jail reforms undertaken by respondent no.3 in conformity with the directions issued by the Honourable Supreme Court from time to time and to ensure protection of human rights of the prisoners and the protection of fundamental rights of prisoners guaranteed under Article 21 of the Constitution of India. According to the petitioners, the reformatory steps and the radical changes made by

respondent no.3 were just the beginning and large number of such steps were under the way but, suddenly, the inmates were informed by the ground level staff of Sabarmati Prison that the respondent-authorities, namely, respondents nos.1 and 2 have transferred respondent no.3. The petitioners and the other inmates were shocked to learn about the order of transfer of respondent no.3 and started feeling of frustration and helplessness. A visitor who visited petitioner no.9 - Dinesh Karamsinh informed petitioner no.9 on the day prior to the filing of the petition that respondent no.3 has been transferred and ultimately the fact of transfer of respondent no.3 and the cause for the same had spread all through out the barracks and inmates and ultimately petitioner no.9 informed his visitor to approach this Court for the purpose of seeking protection of the human rights as well as fundamental rights of prisoners guaranteed under Article 21 of the Constitution of India.

3.2 In view of the allegations and counter allegations made by the parties and the stand taken by respondent no.3 in more than one affidavit filed by him clarifying his stand in the entire matter and considering the nature of the reliefs prayed in the petition and the response given by respondents nos.1 and 2, let me refer to paragraphs 11 and 12 of the petition, which read as under:-

"11) .... The petitioner No.9 herein had a visitor yesterday, who was permitted an official visit to the petitioner No.9. When the visitor of the petitioner No.9 visited the petitioner 9 in the jail, the abovereferred facts have spread all throught the barrack and all the inmates are in a sense of frustration. The said feeling of all the inmates was conveyed by the petitioner No.9 to his visitor with a request to approach this Honourable Court for the purpose of seeking protection of the fundamental rights and human rights of the petitiones and other jail inmates. Since the frustration amongst the jail inmates is so severe that they have decided to stop accepting the food as they wanted to agitate their rights to live as human beings with the enjoyment of fundamental rights guaranteed under Article 21 of the Constitution of India. If the petitioners' fundamental rights are not protected, the inmates of the jail would be deprived of the reformatory process which is initiated by the respondent No.3. The petitioners state that Sabarmati Central Prison

is an important jail as even POTA and TADA Courts hold their sittings inside the premises of the Sabarmati Central Prison. The petitioners are not aware nor they are concerned as to what vested interests have played their role if any in the impugned action of the sudden transfer of respondent No.3. However, the petitioners are only concerned with their human rights and fundamental rights on their behalf and on behalf of the jail inmates of Sabarmati Central Prison on whose behalf the present petition is filed. If this Honourable Court is pleased to direct an inspection of the Sabarmati Central Prison by an independent officer to be appointed by this Honourable Court is pleased to direct an inspection of the Sabarmati Central Prison by an independent officer to be appointed by this Honourable Court, the abovereferred facts would become glaringly clear and this Honourable Court would be able to appreciate the unfortunate living conditions and their improvement after resumption of office by the respondent No.3.

12 It is respectfully submitted that it is absolutely necessary that this Honourable Court is pleased to apprise itself by an indepndent enquiry to be conducted on the spot by a personal visit by an independent officer to be appointed by this Honourable Court, so that the abovereferred facts can be brought to the notice of this Honourable Court effectively. It is true that, normally, Commissions are ot appointed for the purpose of gathering facts to fortify the claim made by a litigant. However, in the peculiar facts of the present case, this Honourable Court may be pleased to appoint an independent officer to be selected by this Honourable Court with a direction to him to make a personal visit to the Sabarmati Central Prison and make a report and produce the report before this Honourable Court with respect to the conditions of the jail inmates in the Sabarmati Central Prison before and after posting of respondent No.3"

3.3 Though nine persons are the petitioners, four different vakalatnamas are produced in the petition of the learned counsel Mr Tushar Mehta and approximately 178 persons have signed these vakalatnamas. Mr Mehta has clarified that these signatures on vakalatnamas are not

obtained with a view to create any show before the Court and also it should not be considered that the signatures are obtained to create any positive impression in the mind of Court nor the same should be treated negatively.

3.4 The learned counsel appearing for the petitioners on the day of the circulation of the present petition had prayed for ad interim relief in terms of paragraph (E)(ii) to stay and suspend the operation, implementation and enforcement of the impugned order of transfer of respondent no.3 and had prayed that respondent no.3 may be restrained from handing over the charge as Superintendent, Sabarmati Central Prison. On 18th November, 2003 this Court instead of granting aforesaid interim relief has passed the following order:-

"Heard ld. counsel Mr. Tushar Mehta for the petitioners and ld. PP Mr. A.D. Oza for the State. Ld. counsel has taken me through the averments made in the memo of the petition. Considering the sensitivity averred in the petition and the fact that till this date, there is no alternative posting of the officer of equal cadre on the post referred to by the petitioner, respondent State can be served with notice so that State can clear its stand in the matter. The Court is also aware of the fact that in the matter of transfer, the Court should normally go very slow in dealing with the decision either of the State or of the State instrumentalities. Hence, notice would serve the purpose at this stage.

Hence, notice to the respondents returnable on 20.11.2003. Mr A.D.Oza, ld. PP appears and waives service of notice for respondent no.1 State of Gujarat.

Direct Service today is permitted qua respondent nos.2 & 3."

On 18th November, 2004 the office of the Honourable Chief Justice of this court received a telegram sent through Naranpura Telegraph Office, Ahmedabad, which was booked at 11.35 hrs. and received at any time after 12.22 noon whereby one of the inmates Dhukh Madansinh informed this Court that he has proceeded on fast unto death. This telegram is placed on record on 19th November, 2003. During the course of the oral submissions, the counsel appearing for the petitioner has not disputed the genuineness of the telegram received by

this Court. The contents of the telegram reveal that this Dhukh Madansinh was interested in getting the order of transfer of Mr Sanjeev Bhatt, respondent no.3, revoked but as I have not found from the legible signature of this Dhukh Madansinh in any of the four vakalatnamas filed, it would not be appropriate to make any comment thereon.

4 In response to the notice issued by this Court on 18th November, 2003 making it returnable on 20th November, 2003, a request for adjournment was made by learned G.P. Mr A.D.Oza on 20th November, 2003 and the matter was adjourned to 24th November, 2004. On 24th November, 2004 the reply affidavit on behalf of respondents nos.1 and 2 dated 21st November, 2004 has been tendered. The said affidavit-in-reply has been filed by one Mr V.M. Chauhan, Joint Secretary, Home Department, Jails, State of Gujarat, along with the documents referred in the affidavit. The stand of the respondents nos.1 and 2, in brief, is that the petition is misconceived and the documents accompanying the petition, if appreciated, it can reasonably inferred that the same is filed at the behest of respondent no.3, Mr Sanjeev Bhatt, who has been transferred from Sabarmati Central Jail, Ahmedabad. Substantially, the order of transfer has been challenged by the petitioners. Otherwise, the copy which was endorsed by the Government to respondent no.3 could not have been produced as one of the annexures with the petition, that is, Annexure-A. The petitioners must have been supplied with the copy of the impugned transfer order at respondent no.3. When the transfer is an incident of service, it was otherwise difficult for respondent no.3 to challenge the order of his transfer as it was passed for administrative reasons and the same does not suffer from any illegality or infirmity. The attempt has been made by respondent no.3 to get his transfer order stayed and the order of transfer cannot be said to have violated or contravened any of the rights of the petitioners. According to respondents nos.1 and 2 the petitioners have no right either constitutional or statutory - to say that they are entitled to have a particular person as the Superintendent of Central Jail or to request the Government to continue or to have any relief from this Court which would bind the Government to a particular person as Superintendent of a particular jail. The averments notwithstanding phrase "right to life" guaranteed by Article 21 of the Constitution of India made by the petitioners are absurd and under this alleged right they cannot get the relief to continue to have a particular person posted as the Superintendent of the

Jail. When the order of transfer is perfectly legal and when the same is not challenged by the concerned officer in any manner directly before this Court, none of the reliefs as prayed for in paragraph 16 of the petition can be granted. The order of transfer of respondent no.3 is passed pursuant to the decision taken by the authority who is competent to transfer respondent no.3 and respondent no.3 is holding a transferable post and as the said transfer is in public interest, it is neither violative of any statutory rule nor was passed mala fide. The decision of transfer was not taken by the authority as a "punitive measure" but it was in the interest of the administration and with a view to ensure that no further damage is done to the order of discipline of Sabarmati Central Jail. Thus, there is no contravention of Article 14 of the Constitution of India. The State has averred in the affidavit that the competent authority is willing to place the original file containing the relevant record and papers before the court for perusal. There is no locus for the petitioners to challenge the order of transfer at Annexure-A. On the contrary, the State has made the grievance in paragraph 6 of the affidavit that it would be wrong to create an impression that there will be complete vacuum in the administration and reforms if respondent no.3 is shifted from Sabarmati Central Jail. On the contrary, various steps taken by respondent no.3 after his posting as a Superintendent of Sabarmati Central Jail in September, 2003 cannot be treated as a step "reformatory" in nature. On the contrary, number of steps taken by respondent no.3 as listed by the petitioners are contrary to the provisions of law and rules. On the contrary, some decisions are apparently look like a decision taken under some whims and as the petitioners were the beneficiaries of such illegal and unauthorised measures taken as per whims of respondent no.3, the have taken up the cause of respondent no.3 with a request to interfere with the order of transfer. Jail Superintendent is under obligation to perform various duties and functions which are prescribed and enumerated in Bombay Jail Manual (as applicable in the State of Gujarat) and it is not open to any Jail Superintendent to flout those statutory obligations. It is the say of respondents nos.1 and 2 that during the short tenure of approximately two months as Jail Superintendent, respondent no.3 has observed the statutory functions more in breach than in compliance. Each liberal action has been taken by the petitioners as "jail reforms". The allegation of the State is that respondent no.3 has done disservice to the jail discipline and safety. It is averred that during the past six months from the date of filing of the petition various committees and important

persons have visited the Sabarmati Jail and without any exception all of them have expressed their satisfaction as to the conditions prevailing in the Sabarmati Central Jail and the State has heavily relied upon the Visitors' Register and the entries made therein for the last six months. It is submitted that during the period between December, 1996 and August, 2000 there were as many as six officers of IPS rank were holding the post of Sabarmati Central Jail at different point of time. The steps taken by respondent no.3 during his tenure as Superintendent of Sabarmati Central Jail cannot be termed as "reforms" but some of the steps are contrary to the established norms, statutory provisions and rules. In paragraph 11 of the reply affidavit the respondent-State has attempted to demonstrate and prove that continuation of respondent no.3 as Superintendent of Sabarmati Central Jail will not be conducive to the public interest in general and in order of discipline of such a big jail. Total seven instances have been mentioned in the first reply affidavit in paragraph 11, which read as under:-

"11.01 It is submitted that in terms of the provisions contained in the Bombay Jail Manual, vide Rule 1226 thereof, there is a body of prisoners, known as "Kedi Pacnh" duly elected by their inmates in a democratic manner for the purpose of effectively representing before the jail authorities & others the grievances, if any, of the jail inmates, for their proper redressal. In spite of there being such a body, the respondent no.3, dictated by his own whims and wishes, has by his order dated 24.9.2003 (a copy whereof is anenxed hereto and marked as Annexure-R/1) constituted a committee of 3 persons and nominated 3 persons of his choice on the said committee for the purpose of giving legal aid. In this context, it is required to be noted that already a Legal Aid Commitee used to visit the Sabarmati Jail on every Saturday and Sunday for providing legal assistance to the needy inmates of the Jail. Even though it might appear ex facie that such a committee of 3 persons is by way of a supplementary measure, yet in reality, the underlying purpose was to provide to these 3 persons freedom to move in any corner of the jail premises. It is noteworthy that the antecedents of these 3 persons are such that they cannot be conferred with such a freedom.

11.02 The respondent no.3 has by his order

dated 1.10.2003 (a copy whereof is annexed hereto and marekd as Annexure-R/2) constituted a Committee of 13 persons of his choice for the so called purpose of providing immediate legal assistance, medical treatment adn for meeting the day today requirements of the inmates. It is submitted that constitution of such a committee is per se illegal as it is contrary to the Bombay Jail Manual more particularly Rule 1226 which provides for election of the prisoners who are convicted by a court of law. Going by the composition of the said Committee of 13 persons, the whimsical and arbitrary attitude of the respondent no.3 herein will be evident. The respondent no.3 has completely ignored the legally and validly elected body of Kedi Panch Committee. It is submitted in this context, that out of 13 persons, most of them are under-trial prisoners involved in serious offences as follows:-

(a) Mehulkumar Chinoy is involved in the offences punishable under Sections 406, 420, 467, 468, 471 and 114 of the IPC.

(b) Rulamin Hathila and Mohammadhusen A Rahim Kalota involved in the Godhra carnage.

(c) Natwarlal Joshi involved in the Corruption Case. He was Secretary of the Subordinate Service Selection Board.

(d) Zahir Rana, accused in the case known as "REMO Marketing."

11.03 It is submitted that in spite of there being a Jail Doctor and other para medical staff at the Jail premises, the respondent no.3, in his usual questionable style of functioning, has been habitually giving permission to the prisoners to go to the Civil Hospital, Ahmedabad, without bothering to ascertaining whether such reference to Civil Hospital is necessary. Before the respondent no.3 assumed the charge as the Superintendent in Sept. 2003, reference to Civil Hospital Ahmedabad used to be only in the ragne of 25 to 30 prisoners per day. But during the stewardship of the respondent no.3, the figure rose to 80 to 100 per day. Such an action on the part of the respondent no.3 has caused serious hardship and inconvenience to the local police

authorities. Financially also, the aforesaid unwarranted reference to the civil hospital had led to the enormous avoidable expenditures. In these circumstances, when the Additional Police Commissioner, Ahmedabad City, by his letter dated 1.11.2003 requrested the Inspector General of Prisons, to look into the matter, the said higher authority by his letter dated 11.11.2003 to the respondent no.3 herein asked for an explanation from him in this behalf. A copy of the said letter dated 11.11.2003 issued by the Addl. DGP and Inspector General of Prisons, Gujarat State, Ahmedabad, is annexed hereto and marked as Annexure-R/3.

11.04 As per relevant provisions in the jail manual as also in the statutes like Gujarat Prisoners (Diet for Prisoners) Rules, 1975, etc. food items are to be given to the inmates strictly in terms of the advice given by the Medical Officer appointed for this purpose. However, in the present case, the respondent no.3 herein, in utter disregard of the said statutory provisions, has issued orders permitting the prisoners to take impermissible items from outside. In this context, copies of the orders issued by the respondent no.3 are annexed hereto and marked as Annexure-R/4.

11.05. Even though there is a statutory ban on the sale and consumption of items like tobacoo, cigarettes, etc. in the jail premises, yet the respondent no.3 has issued order permitting the sale of the so called "Herbal" cigarettes in the premises. A copy of the said order is annexed hereto and marked as Annexure-R/5. By no stretch of imagination, the said measure on the part of the respondent no.3 can be said to be a part of "jail reforms."

11.06 This is not all. Instances have come to the notice of the higher authorities that the respondent no.3 herein under the guise of the permitting some inmates by virtue of their being the officer bearers of the so called committee set up by him, has virtually allowed free access to these to the office of the respondent no.3 and make use of phone. These persons not only enjoy outgoing telephone calls but also invariably enjoy incoming telephone calls from their relatives and friends. This particular measure,

I most respectfully say and submit, has a serious repercussion and impact on the discipline and order in the jail.

11.07 More seriously, the respondent no.3 has the audacity of preventing the vehicles of the learned POTA Judge and the learend Public Prosecutor from entering the jail premises under the guise of security. As a matter of fact, since long the practice in Sabarmati Jail has been to allow the vehicles of such persons to enable them to park inside the premises. This itself is a testimony of "arrogancy" on the part of the respondent no.3."

It is submitted that the order of transfer which has been challenged by the petitioners has been implemented and this is not a case wherein any mandatory type of order can be passed on the wish or desire expressed by the petitioners, more especially when the petitioners have equally efficacious remedy of lodging their complaint to the Visiting Committee i.e. both official as well as non official. According to the State, there is no cause for any grievance raised in the present petition nor there were complaints against other IPS officers who were posted between the year 1996 and 2000 but the same are raised with an oblique motive to oblige respondent no.3 to see that he is retained on the post of Superintendent and the jail inmates can continue to enjoy the facilities provided by respondent no.3 in violation of statutory provisions and the agreed guidelines. It seems that the affidavit is drafted and submitted in the background of the obligation which State owe to the jail inmates of the other prisons of the State especially the big prisons like Junagadh, Rajkot, Baroda and Surat.

5 On 24th November, 2003 affidavit of respondent no.3 came to be submitted by learned Senior Counsel Mr J.R. Nanavati and the stand of respondent no.3 is that he being conversant with the facts of the case he has filed the affidavit only for the limited purpose mentioned in the affidavit. The affidavit runs into practically 38 pages. Mr Nanavati has taken me through all the relevant parts clarifying the contingency placed before the Court by petitioners as well as respondents nos.1 and 2 and as has been explained by respondent no.3. The stand taken by Respondent No.3 is of justification of his actions and denial of all the allegations levelled in the reply affidavit filed by respondents nos.1 and 2.

According to respondent no.3 after joining as Superintendent of Central Jail, Sabarmati, he had studied carefully the provisions of Prisons Act, Bombay Jail Manual and Committee Rules for superintendence and management of jails. It is also claimed that he has studied some of the judicial pronouncements of the Apex Court concerning the rights of the prisoners and duties of the officers charged with the function of managing the prison and none of the actions was violative of any of the provisions but, on the contrary, they are in conformity with the law laid down by the Honourable Supreme Court. In paragraph 7 of the affidavit he has tried to explain as to how a copy of the order of transfer endorsed to him was made available to the petitioners' advocate. It would be proper to quote the relevant part of paragraph 7 in view of the allegations made by learned GP, Mr Oza, that the petitioners have been wrongly posted before the Court but in reality respondent no.3 has attempted to challenge the action and order of his transfer.

> "7. ..... I state and submit that on 18th November 2003 my office had received a telephone call from the petitioner's advocate who wanted to ascertain as to whether any order transferring me is passed as instructed to him on behalf of the petitioner as the petitioner's advocate was instructed to move a petition. When the said telephone was received, I was on a special round of the Jail with the respondent no.2 i.e. Special Inspector General (Prisons) and there I was not available on telephone. On returning to my office, I was informed about the aforesaid telephone and subsequently I had a telephonic talk with the petitioner's advocate who requested me to be supplied with a copy of the order of my transfer. I had therefore, on a request from the petitioner's advocate, faxed through the jail office a copy of the said order on the fax number given to me from the Central Jail itself which was faxed at around 12.00 hours."

6 It is further contended that the averments made in paragraph 6 of the affidavit in reply need no comment but, according to respondent no.3, the actions enumerated in the affidavit are in fact and in conformity with the law and in discharge of his duties. He has never played

with the discipline nor with the safety of jail and there is no element of disservice to jail discipline in his actions. Relying on Rule 732 and 736 it is further contended that in compliance with the said statutory rules he had made it a point to personally visit each yard of Sabarmati Jail along with the official of the jail and when he found that most of the inmates had grievances with respect to their total or partial ignorance about the legal proceedings going on against them or on their behalf in various courts, he found that a majority of the grievances could be redressed if basic legal assistance is offered on day-to-day basis and therefore only he constituted a committee vide order dated 24th September, 2003 (page 33). He has attempted to submit that the legal assistance offered to the jail inmates by the members of Legal Aid Committee coming from this Court was found to be inadequate as the members appointed by the office order dated 24.09.2003 were asked to attend many problems of trivial nature like writing petitions to the competent courts, letters to the lawyers, etc. These persons were selected from the jail inmates who were also advocates. According to respondent no.3, members of Khaidi Panchayat who are elected members are from amongst the convicts and they were not in any manner competent or otherwise qualified to render any kind of legal assistance to the jail inmates. Therefore, it was his duty to find out a way as to whether there are any inmates in the Central Jail who were practising as lawyers and therefore they were entrusted a particular function. In support of this contention, respondent no.3 has placed reliance on Rule 1415 of the Bombay Jail Manual, which reads as under:-

"1415.
Arrangements shall be made for having petitions of appeal written out for prisoners who cannot write and who have no firends or agents who can draw up the petitions for them. The services of literate convicts only need be used, if such prisoners are available in jail for writing out appeals and petitions of illiterate prisoners subject to the provisions of Rule 1098 Bombay Jail Manual in all such cases the Superintendent shall apply for a copy of the judgment or order from the sentencing court and arrange to submit the appeal within the prescribed time limit."

7 It is clarified by respondent no.3 in his affidavit that said three members were not permitted to have any access to any part of the jail and timings of

meeting were fixed strictly and in conformity with Chapter XXII of the title "routine" under the Bombay Jail Manual. These three members were asked to sit in the welfare office from 8.30AM to 11.00AM and from 3.00PM to 5.30PM. During this period all inmates are otherwise to be kept out of their barracks and therefore there was no question of giving extra freedom to these three members. It is claimed that he had also taken care in the said order itself that a person who wanted to visit said three members for legal assistance can only come under proper escort of yard or watchman and if found necessary with escort of sepoy or constable. The decision was an attempt to give basic minimum legal assistance to large number of jail inmates without giving extra freedom to said three under-trial advocates. These three members were facing the charge of very serious nature and two of them are accused of Godhra incident. Respondent no.3 clarified that the antecedents attached to all these prisoners and one of them was involved in serious economic offences is a matter of very little relevance. It is averred that all prisoners in jail are either convicts by competent courts or are facing such serious charges who are not granted the bail by the competent court. When all the prisoners in central prison are bound to have doubtful antecedents and are necessarily tainted with serious criminal charges, a Jail Superintendent is left with no other option but to select from amongst such persons. According to respondent no.3, the constitution of committee vide order dated 24th November, 2003 is an action, which, he thought to be his duty and it was discharged strictly in conformity with the provisions of Bombay Jail Manual.

8 The stand of justification is taken in paragraph 11(1) of the affidavit in response to the allegations made in paragraph 11(2) of reply affidavit filed by respondents nos.1 and 2. It is tried to be explained that the action was not initiated to favour some rich or influential people who were under-trials. It is averred that the action is neither illegal nor arbitrary. According to Mr Bhatt, respondent no.3, the Jail Manual provides for several reformatory measures in the prisoners undergoing sentences or awaiting the trial in jails and to redress the grievances or to attend to the issues like quality of food, medical assistance, legal assistance, sanitation, general hygienic conditions of jail and barracks, certain reformatory steps were required to be taken. The Kedi Panchayat, elected as per Rule 1226 of the Jail Manual is entitled to take part in the administration on such minor aspects at specified periodical intervals. Only four elected members to

represent the interest of nearly 1700 convicts lodged in the Jail were found to be inadequate and almost equal number of under-trial prisoners were virtually unrepresented so far as their grievances and issues regarding basic amenities. All the four members of the Khaidi Panchayat were representing only convict prisoners. Therefore, he took decision to constitute a committee and decided that the persons who are in prison as detenus either under PASA or under any other detention laws should not be made members of the Advisory Council but as there is no provision for representation of under-trial prisoners in Rule 1226 he decided to take assistance and services of the under-trial prisoners with a view to give them representation and to ensure that their educational qualification and skill can be utilised for the betterment of the living conditions in jail. According to respondent no.3 all the members of the Advisory Council, constituted vide office order dated 1st October, 2003, are highly educated persons possessing degree and PG degree in the field of law, engineering and management, etc. By way of illustration, it is mentioned in the affidavit that one Arvindo Banerjee and Maheep Pandey, who are at serial nos.6 and 7 in the list of members of the Advisory Council are from Indian Institute of Management, Ahmedabad, and persons at serial nos.1, 2 and 3 were practising lawyers before their arrest. It is clarified that this Advisory Council was not conferred any power except to administer jail administration and betterment of jail conditions with respect to basic amenities like food, sanitation, etc and he did not find anything wrong in utilising the services of some of the highly educated and skilled persons awaiting trials and the only object was that of reformation. It is averred that as he had no choice, he had included four persons who are involved in very serious offence in the Council and it is stated on oath that no extra freedom was given to said 13 members of the Advisory Council as well as members of Khaidi Panchayat as the time and place of the meeting is fixed and they were not otherwise entitled to meet. The stand taken in relevant paragraph of the affidavit (page 56) is of justification and it is contended that there is no violation of any of the provisions either statutory or otherwise nor the said decision can be said to be arbitrary or illegal and it was a decision taken as a part of overall process of reforming the jail conditions by involving jail inmates for their betterment. It is also explained that number of persons being sent to civil hospital is not decided by him and it is not within his discretion but it is an exclusive function of the Medical Officer appointed by the State Government. Referring to Rule 547 of the

Bombay Jail Manual, he submitted that management of every jail hospital is under the control of Medical Officer who is subordinate to the Superintendent, except as regards medical treatment of the sick. It is submitted that Medical Officer shall have a free hand in medical treatment of the inamates of the Hospital. By quoting Rule 548 and referring to other Rules i.e. Rule 149 to 155 and Rule 568 it is contended that the allegations made in reply affidavit paragraph 11(3) are incorrect. To appreciate the stand taken by respondent no.3, I would like to reproduce exact contentions of respondent no.3 in his affidavit-in-reply, which reads as under:-

"I state and submit that before I resumed my duties as Jail Superintendent, the Medical Officer used to sit for OPD consultation only in the Jail Hospital inside the Sabarmati Central Prison. It is submitted that the Highly Secured Sabarmati Central Prison is spread over in the area of approximately 3 lakhs sq. mts. During my initial experience on my daily rounds of each Yard in the prison. I found that it was very difficult for the ailing inmates to approach the Jail Hospital crossing several stages of security and administrative apathy. It was reported to me that going from the Prison barrack to the Jail Hospital also involve an amount of corruption and those inmates who were incapable of crossing the said administrative barrier were unable to have an easy access to the Medical Officer available in the Jail Hospital. I therefore required the Medical Officers attached to Sabarmati Central Prison to visit each Yard, allotting them specified hours on specified days. Copies of my office order dated 15th September 2003 and 4th November 2003 are annexed herewith and are marekd as Annexure-1 collectively. The purpose behind the said decision taken by me was to eliminate reportedly existing obstacles of administrative apathy and corruption between the ailing inmates and the Medical Officer in order to ensure that each and every inmate could get prompt medical assistance and treatment when required and no needy prison inmate was denied the requisite medical assistance. As a result of easy access to medical assistance as per the above referred procedure, the Medical Officer used to sit with their respective para medical team and requisite medicines in each yard on fixed day during the fixed hours. The Medical Officers thus, used to get to examine more patients tahn before. The

Medical Officers after examining the patients would then on their sole discretion decide whether to send a particular ailing inmate for any further check-up or treatment to the Ahmedabad Civil Hospital which is the referral Hospital for Sabarmati Central Jail."

9 In support of the above stand, respondent no.3 has quoted Rule 601 of the Bombay Police Manual and according to him he used to arrange for the escort for the inmates who had been taken to Civil Hospital for further treatment or investigation and if a Medical Officer finds more persons who are required to be treated only in the Civil Hospital, as Jail Superintendent, he cannot take risk with the health of the jail inmates and it was his duty to send them to the Civil Hospital based upon the medical opinion of the Jail Doctor. If an inmate is found unusually or excessively sick, then, he is sent to Civil Hospital and such situation was even intimated to Inspector General of Prison through the Jail Superintendent. It is the perception of respondent no.3 that if more inmates are advised by Medical Officer to be treated in Civil Hospital, it is the duty of the police to tackle such problem at Civil Hospital. When Jail Superintendent is supposed to arrange for transport of inmates who are advised for medical treatment by the Medical Officer at Civil Hospital, he has to seek assistance and help from the Police Commissionerate. The delay in arrival of the police escort at the jail would not make the Jail Superintendent to be responsible for any mismanagement. On the contrary, referring to the letter written by him to Dr Anil Chedha, Superintendent, Civil Hospital, Ahmedabad, dated 17th September, 2003 it is submitted that there cannot be any object or motive attributable to him on issue of sending jail inmates for further treatment to the Civil Hospital and it is denied that he had given permission to any prisoner to go to Civil Hospital and it is not the normal function of the Jail Superintendent to ascertain whether such reference is necessary as such decision is to be taken by the qualified doctor. It is also attempted to explain the contigencies brought on record by producing the letter dated 11th November, 2003 at Annexure-R/3 at page 35 that as he was asked to provide the details in tabular form for the preceding two years, he had instructed his subordinate to gather the information but before he could gather the information, the order of transfer dated 17th November, 2003 came to be passed.

10 With regard to the fact stated in sub-paragraph 4 of paragraph 11 of the reply affidavit it is explained by

respondent no.3 that the order passed by him on 9th October, 2003 is strictly in conformity with the provisions made in Jail Manual whereby he had permitted the items specified in the order can be made available to the under-trials as they are entitled to same under different Rules contained in Jail Manual and the said items were inspected by the Jailor and only non-objectionable items were taken inside the prison after recording the items in the prescribed register. Quoting Section 31 of the Prisons Act and referring to Rule 1365 of the Jail Manual, it is submitted that when statutory provisions have conferred obligations on him as Jail Superintendent, it was his statutory duty to permit the jail inmates to have access to such items as part of their right to life under Article 21 of Constitution of India. With a view to justify the action taken while issuing the office order dated 9th October, 2003 the affidavit also deals with each of the eight items included in the list which were permitted to be supplied to the jail inmates and in order to support the said explanation Rules Nos.1365, 565, 606, 698, 1356, 1357, 1358 and 1360 of the Bombay Jail Manual have been relied.

11 In response to the averments made in said paragraph (5) of paragraph 11 of the affidavit-in-reply filed by respondents nos.1 and 2 it is pointed out that there is no statutory ban provided in the Jail Manual for sale and consumption of items like tobacco and cigarettes, etc. in the jail premises. It is averred that as a matter of fact Rule 1365 statutorily provides that there shall be canteen run on self-supporting basis in every central jail stocking inter-alia tobacco in various forms and relevant part from page 11 of the Jail Manual has been quoted by respondent no.3, which reads as under:-

> "Like the large number of the members of the public accustomed to luxuries like tea and smoking, many of the prisoners are accustomed to bidis and tea. The experience has shown that if these are denied to a prisoner, he becomes restless and irritable. He also suffers in health. It is also found that such prisoners commit petty jail offences, but behave quite well if they are allowed to enjoy these small luxuries...."

12 It is contended that after resumption of duty as Jail Superintendent he categorically found that there was institutionalised corruption and there used to be rampant corruption of beedis, cigarettes and tobacco into the

jail in connivance with the staff at various levels resulting into the position where one beedi used to cost up to Rs.5 as reported to him by the jail inmates during his daily round and therefore he decided to introduce herbal cigarettes which were officially made available to the adult jail inmates in the jail canteen itself at the prescribed rate and it is the say of the respondent no.3 that by providing herbal beedis and cigarettes. So far as allegation as to use of telephone facilities is concerned as made in paragraph 11(6) of the reply affidavit, respondent no.3 has denied the contents of the said paragraph and it is specifically stated as under:-

> ".... I state that those inmates who were involved with certain jail administration related work like assisting in the canteen functioning, kitchen functioning and other special tasks connected with welfare measures were permitted restricted access to the jail telephones. To illustrate this point, it may be pointed out that an inmate who is assisting the functioning of the canteen has restricted access to jail telephones for the purpose of communicating with the suppliers of various items and for doing so, such inmate is required to be given and was given access to the jail telephone through the jail constable/officer deployed at my office. To illustrate the point further, as a part of the welfare measure, when I found that some jail inmates need artificial limbs or tricycles for handicapped inmates, such tasks were entrusted to certain inmates who could effectively liaison with voluntary charitable organisations like Karuna Trust etc. and could procure such items. I am humbly presenting the above referred illustrations to bring home the point that it was only in cases where some task was assigned under the Jail Manual to certain inmates for the purposes provided for in the Jail Manual. Only such inmates were permitted the restricted access to the telephone in presence of a responsible jail constable/officer. I therefore respectfully deny that in view of the above position, there can be any serious repercussion and impact on the discipline and order in the jail. I emphatically deny having given any access whatsoever to any inmate at any point of time to enjoy either incoming or outgoing telephone calls either to their friends or relatives."

13 With reference to contentions of paragraph 11(7)

of the affidavit-in-reply of respondent no.1 and 2 it is stated that the question of permitting the vehicle inside the jail premises is already judicially adjudicated and concluded by the order of the learned Special Judge (POTA) and therefore the said issue should not have been raised. It is denied that he had ever prevented the vehicle of the learned Special Judge (POTA) at any point of time. It is denied that he had exhibited any arrogance as averred in sub-paragraph (7) of paragraph 11 or otherwise. Of course, the basic contention is that he is not desirous to join any issue with respondents on merits as to his transfer by the impugned order in the present petition is concerned. However, as there is elaborate reference as to his functioning in the affidavit-in-reply by respondents nos.1 and 2 as Superintendent, Sabarmati Central Jail, he has been put under obligation to place the facts which, according to his perception are relevant for the purpose of assisting the Court on the issues raised in the reply filed by respondents nos.1 and 2.

14 After these three first basic affidavits, the petitioners moved a draft amendment on 16th December, 2003 and as the said amendment is allowed, an additional paragraph is inserted in the relief clause whereby the petitioners have prayed for setting aside the order of posting of respondent no.3 as Principal, State Reserve Police Training Centre, Chowky, Junagadh, as well as the decision taken by the State Government for filling up the post of Jail Superintendent, Sabarmati Central Jail, Ahmedabad, and it is further prayed that respondents nos.1 and 2 be directed to appoint respondent no.3 as Jail Superintendent of Central Jail, Sabarmati, Ahmedabad. Therefore, the petition moved shall have to be decided in reference to the actual relief now prayed in exercise of the jurisdiction vested with the Court under Article 226 of the Constitution of India and mainly in the background of Article 21 of the Constitution of India and other judicial pronouncements of the Apex Court placed before this Court by the learned counsel for the parties.

15 On 6th December 2003 respondents nos.1 and 2 submitted affidavit in sur rejoinder dealing with the averments made by respondent no.3 in his affidavit-in-reply with annexures and an attempt is made to falsify the stand taken by the petitioner as well as respondent no.3. Referring to various documents including Annexure-R/4 colly. dated 21st November, 2003 it is submitted that major irregularities were noticed by the higher ups of respondent no.3 and the State

Government. It is also necessary to refer to paragraph 17 of the very affidavit, which deals with the documents produced with Annexure-R/5 Colly. The said paragraphs 14 and 17 read as under:-

"14. I say and submit that as per the report made by the Superintendent of the Ahmedabad Central Jail dated 21.11.2003, a list was submitted to the Inspector General of Prison all the items, which were supplied on 10.10.2003, 25.10.2003, 06.11.2003 and 10.10.2003 respectively, in the nature of sweets meat as 'Dudhpak, Gajar no Halvo, and Gulab Jamun.' The remarksw ere signed by the store keeper, the cook and the Jailor In-charge of the Jail Kitchen, clearly indicate that, apart from the access material available from the rationing department, the rest of the material was supplied by the Committee. Annexed hereto and marked as Annexure-R4 is the copy reflecting the same.

It clearly indicates that, the new committee formed at the behest of the respondent no.3, comprising of 13 persons involved in Bank Scams, REMO/MLM Scam, Godhra Carnage and such other serious offences have been permitted to supply additional raw material which were required to provide such sweet meats and other items, to the Jail inmates. This would also cause undue hardship and prove to be a major hurdle, not only in the administration of the Jail, but also, to maintain control over the raw-material. The raw-material supplied at the behest of some of the inmates could be misused to cause large scale damage to the health and safety of the inmates.

"17. I say and submit that, the communication which have been addressed to the Superior Officers, also reflects that, the respondent No.3 has shown scant regard for the Superior Officer and has tried to as per his own free will, inspite of repeated instruction. I say that this also causes administrative difficulties. I say that this also would naturally, cause a lot of administrative difficulties. It would be appropriate to state, that scant regard for administrative instructions and flouting thereof, would in a given case, result in collapse of entire administration, if not controlled or repaired at the right stage. The said

communication along with relevant record and proceeding of the notice reply and the order are anenxed hereto and marked as Annexure-R5 colly."

16 On 15th December 2003 an affidavit by way of rejoinder on behalf of respondent no.3 has been submitted in which the stand taken by respondent no.3 in his first affidavit has been elaborated and certain documents have been produced by respondent no.3 in support of the contentions raised by respondent no.3 in the said affidavit at pages 290 to 307. The affidavit of 15th December 2003 can be said to be the third affidavit on behalf of respondent no.3 as respondent no.3 has attempted to clarify his stand by submitting surrejoinder affidavit on 18/12/2003, which is at page 229 and the allegations made in paragraphs nos.6, 8, 9, 10, 12, 14, 15, 16 of the reply affidavit filed by respondent no.2 are dealt with by respondent no.3. An additional affidavit was filed by respondent no.2 dealing with the contents of affidavit dated 15.12.2003 of the respondent no.3 which is at page 311.

17 The affidavit of the petitioners filed by way of rejoinder dated 28.11.2003 along with the annexures including the xerox copy of the paper cuttings is on record and it is submitted that the petitioners and other jail inmates of Sabarmati Central Prison had no direct access to outside world. Even then the pitiable condition of the prison had seen the day light and after several years for the first time the jail inmates were being treated as human beings and in a very short span of two months several rapid steps were taken to ensure that the jail inmates could live with human dignity. This affidavit deals with the contentions of the affidavit-inreply of respondents nos.1 and 2 very strongly while resisting the petition on merits. It is therefore evident that the petitioners have put up their case in detail and on considering the stand taken by the parties carefully, the points raised and the issues emerging from the record are required to be dealt with in reference to the reliefs prayed by the petitioners.

18 I have heard the oral arguments of Mr Tushar Mehta, learned counsel appearing for the petitioners, learned Senior Counsel Mr J.R. Nanavati, appearing for respondent no.3, who can be said to be a supporting respondent and Mr A.D. Oza, learned Government Pleader, in detail. All of them have taken me through the various contentions raised in the affidavits referred to herein above and the documents produced by them. Some of the

documents are produced by both the parties and they have attempted to interpret a particular document in reference to the stand taken by the concerned party in their affidavit. Some of the authorities cited and referred to by the learned counsel are also common.

19 Mr Tushar Mehta and Mr J.R. Nanavati have also referred to some of the portions from Chapter 14 to 21 of "I Dare It! - A Biography of Ms Kiran Bedi", published by Parmesh Dangwal. On the other hand, Mr Oza has referred to some other part of the very book in support of his submissions. To appreciate the rival contentions, I have gone through the relevant Chapters brought to the notice of this Court in reference to certain observations made by the Apex Court in case of Sunil Batra v/s Delhi Administration (AIR 1990 SC 1579), which deals with the practice of keeping the under-trials with the convicts in jail, etc., in the background of Articles 14, 19 and 21 of the Constitution of India.

20 During the course of hearing the learned Senior Counsel Mr Nanavati has attempted to submit that jails in this country are practically neglected as institutions or are treated as a part of the Home Department. even then, the respondent no.3 had initiated the activities with caution and zeal both. In the same way, the cadre of Superintendent of any central prison is also considered to be very neglected cadre. Any attention is being paid very hardly in promotional growth and service conditions are also mediocre. It is referred to in the book mentioned hereinabove that this situation creates tremendous frustration, low morale, exploitation and poor integrity. The transfers of jail staff in the State of Gujarat may be minimal and therefore the persons working in jail impliedly feel that they are also undergoing some type of imprisonment. But, according to the petitioners, after taking over the charge by respondent no.3 - Mr Sanjeev Bhatt they had never felt that he has been dubbed on the post and had started responding to the communications of the inmates and established a link between the prisoners and IG Prisons. Only with a view to brush aside the sense of mutual distrust, certain steps are taken by respondent no.3 in the same way and manner as Mrs Kiran Bedi was functioning with the inmates of Tihari Jail, Delhi, but the same was not appreciated by the State Government in proper perspective. The relevant chapters of the book mainly deal with the personality of Mrs Kiran Bedi and her methodology of working with the prisoners in the background of conditions of jail and various types of prisoners and duties handled by her in a very effective manner keeping

their human rights and personal freedom as human beings in centre. From the affidavit-in-reply and rejoinder affidavits filed by respondent no.3 Mr Bhatt it is apparent that he has attempted to justify each action taken by him in the short period of two months including constitution of a committee of 13 persons from the group of under-trials, acceptance of donations by way of certain articles, special food and sweets etc on certain occasions by relaxing certain very well accepted and followed norms and even removal of iron mesh/net which was being kept between jail inmates and the visitors from both the sides.

21 It is stated specifically by the petitioners that the atmosphere had improved because of the special relaxation and facilities provided to the prisoners and the under-trials and there was no element of laxity or negligence in handling hardened criminals nor any special favour was shown to rich or well-educated under-trial prisoners. According to Mr Mehta, increase in number of persons visiting civil hospital for medical assistance should be considered favourably and it is only because of paucity of police escort available the genuine sick patients were not being sent to the civil hospital. Of course, it is relevant to note that there is no allegation in the affidavit-in-reply filed by respondent-State that any serious complaint was received from jail authorities or the police personnel who were taking the jail inmates to civil hospital regarding misbehaviour or mal practice against any of the inmates. But, it can be noticed from the affidavit filed by the petitioners as well as by respondent no.3 that despite the improvement in hygienic conditions of the jail starting from quality of drinking water to proper quality and quantity of food, there is a rise in number of sick and ill persons day by day. The say of the State Government is that this number had increased and it is not on record as to how many pesons, out of such sick persons sent to Civil Hospital for follow up treatment, were immediately admitted in the hospital on the ground of inadequacy of treatment in jail.

22 It is rightly argued by Mr Oza that each change or step taken by Mr Bhatt as Superintendent cannot be viewed as a step towards reformation or as a step of reformation. Reform is a long process and some times the error in judging the internal atmosphere of a big jail like Sabarmati Central Jail may create serious problem for administration. Merely because no such eventuality had occurred, it cannot take this Court to a conclusion that an order of transfer was nothing but an arbitrary

action which resulted into denial of prisoners' right flowing from Article 21 of the Constitution of India or it was a victimisation of a police officer who had not even in some cases cared to implement the suggestions of his senior.

23 The correspondence between the senior officer and respondent no.3 - Mr Bhatt regarding filing of affidavit or making a statement in a proceeding being conducted by the learned Presiding Judge of the Court in the prison campus itself against the accused against whom the orders under Section 268 of the Criminal Procedure Code have been passed by the State Government clearly indicates that there is a hidden element either of absence of rapport or disharmony between these two very senior officials. It seems that respondent no.3 - Mr Bhatt and the Presiding Judge of the POTA Court had a small issue, may not be a prestige issue, regarding entry of a motor car and the vehicle of Special Public Prosecutor appointed by the State Government inside the prison where the court room is actually located. I am not inclined to comment as to quality or the tenor of the language used in the correspondence as well as resistance placed before the Presiding Officer of the POTA Court when an application was filed for appropriate orders by the learned Special Public Prosecutor. It emerges from the record that till the date of posting of Mr Bhatt as a Superintendent of Central Jail after close scrutiny and check each vehicle taking the Presiding Officer as well as Special Public Prosecutor or CBI's Special Public Prosecutor was permitted to enter into prison up to court room in their respective vehicles. The Police Officers have privilege to express anger or displeasure because they are so trained. A Superintendent of a big jail intends to be strict on the point of entry of vehicles inside the jail premises, he can do so. But when the State Government has taken a stand that the transfer of the officer is a simple administrative action and the same is in the interest of administration, then, at least, the stand taken by respondent no.3 can be looked into by the Court more particularly when the say of respondent no.3 Mr Bhatt is of justification on one hand and also to say simultaneously that "the chapter concluded by the judicial orders" on the other. In a prison like Sabarmati, non-repo and disharmony between Superintendent and teh State or I.G.Prison or any other superior can by itself is sufficient reason to pass any appropriate order.

24 Not a single document is produced either by the petitioners or the supporting respondent that certain

constructive suggestions were made to the senior officials where such decisions and relaxations were under contemplation. It is not the say of the petitioners that the senior officials or the State Government have never ever responded to any of the constructive suggestion made for betterment of the jail inmates either made by them or Respondent No.3. Mr Nanavati and Mr Mehta both have submitted that the endorsements found in the visitors book of Sabarmati Central Prison by the visitors and officials of the State Government or other VIPs should be ignored because such endorsements are made either mechanically or as a routine formality.

25 But, from the totality of the facts and circumstances emerging on record it cannot be inferred that the atmosphere and the discipline of the jail was so strict, unhygeinic or indecent and therefore certain immediate measures and relaxations were required to be made as an extraordinary measure by the Superintendent even without consulting higher ups and making relaxation in the accepted norms and practice which are otherwise being followed by all big prisons in the State of Gujarat. If Sabarmati Central Jail is to be given a different status of a model jail for introducing certain measures and relaxations making special deviations then this could not have been done by an individual. It seems that the wish and will to do something better and the decision taken for the very purpose by a Superintendent has been considered by the petitioners as a special treatment and special relaxation and that by themselves have added an element of humanity or dignity. Presence of some strictness in the jail as prescribed by the manual and law by itself cannot be said to be either inhuman or undignified of an individual human being. The Court is aware to the non-philosophy of reformatory school and the attempts which have been made by the Courts including the Apex Court and the various Committees constituted for the purpose.

26 If the stand of the petitioners is scrutinised closely, then, it would be difficult to conclude for this Court that the transfer of Superintendent Mr Bhatt, taken by the State Government, has adversely affected the process of either betterment of jail condition or the reforms that are required to be introduced. A suggestion cannot be equated with a complaint. It may be that a fact placed by way of complaint may not be a grievance but, it may only be a suggestion placed in the form of a complaint and sometimes, a suggestion also may indicate the grievance. It is not on record that any of the petitioners had ever made any suggestion or complaint as

to the quality and quantity of the food in the near past prior to the date on which respondent no.3 had taken over the charge as Superintendent of Central Jail, Sabarmati.

27 While resisting the petition respondent-State has tendered one statement in tabular form with a view to point out that as such no drastic measures which can be really said to be a reformative action were taken in light of constitutional right flowing from Article 21 of the Constitution of India. Approach of respondent no.3 towards the petitioners was of different type and it would not be justified to say that the petitioners were given unusual or unwarranted freedom. The State Government has mainly relied upon certain statutory provisions of Jail Manual and the Circulars issued by the Government i.e. by I.G. Prison, Gujarat State, on 22.10.1969. Service of feast on occasions or during period of festival days should not be viewed as a serious irregularity but the method adopted and the source utilised positively can be looked into because, ultimately, the State Government may be pressed by the prisoners of each jail, especially big jails, where the strength of the prisoners is comparatively high and where collective bargaining may develop. Some of the actions such as installation of tea vending machines in certain areas of Central Prison or introduction of herbal beedis in the canteen run within the premises of the jail and permitting some prisoners / under-trials to use telephone facilities etc. have been introduced but all such decisions involve element of policy decisions. In the same way, the decision of respondent no.3 deviating from the usual practice, to obstruct the entry of motor vehicles carrying the Presiding Judge of the Court trying the cases of under-trials whose movements have been restricted because of the orders passed under Section 268 of the Criminal Procedure Code and which was followed by the administration was also an act that can be said to be a decision involving a policy matter because till the date the new system was attempted to be introduced, such vehicles were taken inside the prison up to court room after proper checking. The geographical distance between the court room and the chhota chakkar are where the hardened criminals are kept is more than reasonable. It emerges from the record that to boost the morale of under trial prisoners they were permitted to use not only telephone but indirectly a fax machine of the office of respondent no.3. It is said that only in case of necessity the prisoners were permitted to use such facility but the said approach of Respondsay of the petitioners

decision of transferring the respondent no.3 Mr Sanjeev Bhatt, cannot be said to be a rational approach or an act of wisdom. The above referred chart prepared on the basis of averments made in various affidavits filed by the parties provided to the Court is reproduced hereinbelow with a view to appreciate the stand taken by the petitioners in the back ground of the reliefs prayed by them:-

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IV. Decision taken for removal of general supervision of the Senior wire mesh, which was present in the visitors' room, replacing with very wide gaps.	This action was taken without intimation and/or permission of the Inspector General of JJJJJJJJJJJJJJJJJJJJJJJJJJJicle 21 of the Constitution of India. can cause serious prejudice to the security of the Jail premises, and can be misused by the	under Jailo was e timin and i prono Art

. Sometimes, the interview time tended marginally beyond specified s. This increase in time had ated goodwill amongst the visitors is stated that as per judicial ncements interviews with visitor undamental right guaranteed under

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	inmates of the prisoner.	Explanation of respondent no.3 in permitting the interviews for longer duration is satisfactory.	
V.	Granted permission to hardcore gangsters either convicted or imits the acceptance and use in very serious offences. to be removed from the 'Anda Cell' of the High Security Yard and to visit the area earmarked for the under-trial prisoners (Chhotachakar).	The action of granting permission is in gross and 770 of the Bombay Jail Manual.	
VI.	Accepted articles as donation, i.e. Flour Mill, Grinder, Gas Stove, Utensils, Tiffin boxes, etc.	There is no provision for acceptance of such donation, much less, without it being indicated as to from whom the same have been accepted and/or, there	Section 31 of the Prisons Act permits of certain articles by jail inmates as they are required to be treated like any other normal human beings.

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	language, against the Presiding Officer of	well as, Superior Officers.	
	JJJJJJJJJJJJJJJJJJJJJ complying with the instructions issued by the Superior Officers.		
IX	Resp.No.3 permitted acce--do-ptance of eatable items and toiletries from visitors, by the inmates.	There is a clear ban against the acceptance of such articles under Para 9(8) of the Gujarat Prisoners JJJJJJJJJJJJJJJJJJJJJJJJJJJJJ views and Communications etc.) Rules, 1973.	
X.	Resp.No.3 purchased the medicines to the tune of Rs.1,95,762/- in two JJines and medical staff within ison. dicines and medical staff within m the IG Prison. dicines and medical staff within months from the IG Prison. dicines and medical staff within months from the IG Prison. dicines and medical staff within months rom the IG Prison. dicines and medical staff within months from the IG Prison. dicines and medical staff within months from the G Prison. dicines and medical staff within month from the IG Prison. dicines and medical staff within months from the IG Prison. dicines and medical staff within months from the	Not obtained any permission and/or sanction from the months from the IG P months fr months from the months from the IG Prison. months from the months from the IG Prison. months from the months from the IG Prison. months from the months from the IG Prison. months from the months from the IG Prison. months from the months from the IG Prison. months from the months from the IG Prison. months from the	Resp. o.3 had devised a system and the d ctors were sent in various jail yards and barracks with requisite me-
	open market, without having any powers to do so, for such huge amount.		jail nd all these decisions are in conso ance with Rules 547, 568 and 601 o the Bombay Jail Manual and the jail

dministration has pointed out
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	of sweetmeats, as follows:		ing days, is permitted:
	10/10/2003 Dudh Paua		
	19/10/2003 Gulab Jamun		1. 26th January
	25/10/2003 Puri,Palak		2. 15th August
	Panir, Sev		3. 1st May
	Tomata-nu		4. 2nd October
	Sak, Batata		
	Vada, Dudh		It may be stated here
	Malai, Pulav.		that the articles and/or
	02/11/2003 Fruit Salad		funds, for such prepara-
	6/11/2003 Gajar No Halva		tion, as per the report
	17/11/2003 Dal Dhokli		of the VC (Jailer who is
	Dal Fry.		in-charge of the Canteen)
			was obtained from the
			selected 13 persons of
			the Committee.
XIV	Acceptance of funds for preparation of certain articles given by way of snacks (buns).		As per the Provisions of the Gujarat Prisoners (Diet for Prisoners) Rules, 1975, no such additional supply is permitted. The funds for the oil, yeast, flour sugar etc have been
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required which can help the Superintendent in implementing the complicated decisions or actions, and that practice normally should be adopted. He may not accept the suggestion of his superiors or may even suggest modifications during the regular meetings if they are held at regular intervals and they can be used as a platform in seeking solicitation or advice of his higher-ups. If the stand taken by the petitioners and respondent no.3 is appreciated together, then, it emerges that such attempts were made and some actions, which are now being condemned by the State Government, were taken either by consent or assent of the higher ups. But, it is apparent that the so called miserable conditions which are narrated of the jail as well as its administration which was existing prior to the posting of respondent no.3, has not been brought satisfactorily before this Court. It would amount to doing injustice indirectly to all the predecessors of respondent no.3 if the allegations made in the petition are accepted as Gospel truth. It is likely that because of the posting of respondent no.3 the conditions of jail as to quality of food, drinking water, management of canteen and the sports activities, etc. might have improved and the hygienic conditions also have taken a better shape but that by itself would not make the decision of the Government to transfer respondent no.3 whose posting was otherwise ex-cadre arbitrary, capricious or mala fide. On the contrary, a popular officer would add a feather in the cap of the Government especially as he is handling the biggest jail of the State in an efficient manner. It is not the say of respondent no.3 that he has been victimised for a particular reason or because of animosity between him and his superiors. If the senior in cadre or immediate superior in the Department like police, where the discipline is one of the most important aspects, becomes strict when his advice or directions are not complied with properly then, he may advice the State Government to take appropriate decision and such advice, even if it is made, cannot be said to be an action taken with ulterior motive or mala fide. Mere allegation of mala fide has no room in the field of service jurisprudence. One can be transferred from Post-A to Post-B in a disciplined force like police for one single mistake or one may be asked to take over at another place by way of replacement of other officer who has committed mistake.

29 The fact that on transfer of Superintendent, Central Jail, the Government had not posted the officer of the equal rank vice the Superintendent but thereafter the Court has been informed that a regular officer has

taken over the charge and the jail administration is being looked after by such newly posted officer. This aspect also will have some bearing in the merit of the present petition.

30 The say of the petitioners is that they had started getting the recognition as human being and they are not challenging the order of transfer of respondent no.3 but according to the petitioner the State Government must be directed to continue the services of respondent no.3 as Superintendent of Central Jail till the practice adopted by respondent no.3 as a dynamic officer gets regular momentum and the actions taken by way of reforms become a practice for all the jail staff and the officer who succeeds the respondent no.3. According to the petitioners, actions taken by respondent no.3 were within the power of a Superintendent and they were able to ventilate their grievances freely and their suggestions to minimise the hardships were being effectively acted upon. If the contents of the affidavit filed by the petitioners are appreciated in the light of the actions taken by respondent no.3 and changes made in routine administration, then, the same need to be considered vis-a-vis the justification pleaded by respondent no.3.

31 The word "discretion" standing alone and unsupported by circumstances signifies the exercise of judgement, skill or wisdom as distinguished from folly, unthinking or haste. In the present case evidently it emerges prima facie that there is some element of arbitrariness in the decisions taken by respondent no.3 while exercising his discretion. The word "discretion" in itself implies vigilant circumspection and care. So where the discretionary powers are to be used to confer some latitude or liberty to a class of persons who are indisputably either under-trial prisoners of serious offences or convicts, it becomes a heavy responsibility. If a certain latitude or liberty is accorded by a statute or manual or circular issued by I.G., Prison, to the Superintendent, that by itself limits and regulates the exercise of the discretion and prevents it from being wholly absolute, capricious or exempt from review and therefore when the State Government while assessing the administration of Central Jail, Sabarmati, has thought it fit to replace the officer for administrative reasons, the petitioners would not be entitled to get such transfer either cancelled or stayed.

32 It is not the say of even the petitioners that the State Government has misused the power of transfer of the Superintendent nor the petitioners have challenged

the supervisory control of the State Government or the authority who has issued the order of transfer. On the contrary, the stand of respondent no.3 is that he is a disciplined police officer and he is not even indirectly challenging the action of the State Government in transferring him from the post of Superintendent, Sabarmati Central Jail. Ordinarily, although the power of transfer vests with the employer, it is subject to statuary provisions operating in the field. In the instant case the order of transfer is not found to be illegal or arbitrary. It is on record that certain dangerous persons and hardened criminals, who are comparatively large in number, are in Sabarmati Central Jail. Some of them are under-trials and some of them are convicts. When the Superintendent has constituted a committee of under-trial prisoners in absence of any provision then, number of members of such committee also must have been decided by him. The fact as to how many other graduates, teachers, chartered accountants or lawyers were available than the persons who are included in the Committee has not been brought to the notice of the Court. But, during the course of oral submissions, it is successfully pointed out that very smart and intelligent persons were not required to be included in such committees. When Kedi Panchayat was consisting of four members then the group representing under-trial prisoners could have been restricted to similar number i.e. 4-5 without conferring any privilege on them. The administration of a prison where the prisoners are about 3,000 to 4,000 and where the guidance of IG, Prison, is necessary and the respondent no.3 being experienced IPS officer the question that crops up in the mind of the Court is that whether formation of such committee with big strength was ever required. I do not want to refer to the names mentioned in the order but most of them are white-collar criminals and some of them have direct roots in the nearby vicinity of the Sabarmati Central Prison i.e. in the city of Ahmedabad. Obviously, such under-trials may have a huge influence of their wealth, intelligence and social background and therefore it was not impossible for them to convince other prisoners to sign the vakalatnamas in large numbers along with the petitioners so that this Court might be impressed by the case of the petitioners.

33 I have carefully gone through the verdict of the Apex Court in the case of Sunil Batra (supra) and other decisions where the rights of under-trials and prisoners flowing from Article 21 of the Constitution of India have been recognised and managers of the jail have been condemned for their wrong found by the courts. But not a

single incident which can be said to be serious has been specifically pointed out by the petitioners. On the contrary, the experience of this Court is that this Court is getting temporary and regular bail applications since years directly or through the City Civil and Sessions Judge which is a regular visitor of Central Jail, Sabarmati. It is not necessary to mention the number but from the record of the Court it can be ascertained that even prior to the posting of respondent no.3 large number of applications for temporary bail have been moved in various courts by the prisoners or under-trials on the ground of health and no need was ever felt to provide special legal aid by any committee like the committee framed under the orders of respondent no.3. Any educated person having some reasonable understanding and good handwriting can draft an application for bail or any other relief such as parole, furlough, etc. Any teacher or a panchayat secretary or a law graduate (though he may not be a lawyer, by profession) can ably do that work. Such constitution of the committee, on the contrary, would raise the influence of the under-trials or prisoners amongst other prisoners or under-trials which would put them to a position under which they can exploit the other under-trials or prisoners. The Court is, therefore, not convinced even prima facie with the facts narrated by the petitioners, which are multidimensional and multifarious, that the transfer of respondent no.3 had seriously jeopardised their right flowing from Article 21 of the Constitution of India and their apprehension that they shall not be treated henceforth as a human being and the same is ill-founded. The apprehension that their legitimate constitutional rights, which are recognised by the Courts and some part of such rights which are accepted by the respondent no.3 shall be curtailed, is also not acceptable. The law regulates social interest and arbitrates conflicting claims and demands. Undoubtedly, there is a cross-cultural conflict between the prisoners and managers of the prison and they must find answer to the new challenges. The Court is required to mould the jail administration system to meet with the new challenges. Therefore, in operating the jail mechanism the law should adopt the corrective machinery based on the factual matrix. It would be wrong to interpret that latitude or liberal approach or use of corrective machinery only gives the expected results. If the say of the petitioners is considered in this background, then, it will be difficult for this Court even to accede that the petitioners have no other alternative efficacious remedy available under the law.

34 The paper cuttings produced by the petitioners

reflect the scenario of Sabarmati jail and behaviour of the inmates immediately after the order of transfer under challenge and especially after institution of the present proceeding some of the inmates had threatened of self-immolation. I am told that the prison inmates had threatened fast unto death and they had gone on hunger strike. The State machinery was compelled to introduce the personnel from State Reserve Police. Of course, the Court is impressed because of certain steps taken by respondent no.3. Accordingly, certain changes can be introduced one after the other after regular interval and that too chronologically but the attempts to commit suicide by some of the prisoners or the press notes projecting respondent no.3 as a person who has started treating the prisoners as human beings for the first time in the history have not impressed this Court much and it would not tilt the balance in favour of the petitioners because the petitioners are supposed to establish the facts stated in the petition and the averments made on oath by placing certain concrete and convincing facts and circumstances.

35 The Court is not convinced about the apprehension expressed or suggestions made indirectly in the relief clauses which have been referred to hereinabove. The petition shall have to be dismissed having no merits holding that the petitioners have no case on merits and the petition is accordingly dismissed as this Court finds strength in the say of Mr Oza that respondent no.3, in reality, has challenged the order of transfer through jail inmates. Notice is discharged.

36 Even on the point of locus the petitioners have no good case. Of course, Mr Mehta has submitted that the petitioners are not challenging the order of transfer issued by the Government but, the anxiety of the petitioners is that this Court should say something as to the rights of the prisoners flowing from Article 21 of the Constitution of India and they have every right to say that their such rights are recognised by the Government also. Failure on the part of the jail administration to implement various directions issued by the Government in this behalf is one of the reasons which had compelled the petitioners to take up the issue again after some years when they saw a silver lining on a dark cloud for the first time when respondent no.3 had started taking progressive and dynamic steps. But the nature of reliefs prayed for in the petition and especially the amendment sought for by them after respondent no.3 handed over the charge of the post of Superintendent, Sabarmati Central Jail, and took over the charge at new place of

posting whereby it was insisted that this very officer should be posted as Superintendent of Sabarmati Central Jail compels this Court to draw an inference that in reality they are aggrieved by the order of transfer of respondent no.3 and they are very much challenging the action of transfer, taken by the State Government. Therefore, point of locus standi of the petitioners, taken by the State Government, cannot be ignored saying that the ultimate relief covers some other area also. The ratio of the decision in the case of DALPAT RAJ BHANDARI, ADVOCATE v. UNION OF INDIA AND OTHERS [(1995) Supp. (1) SCC 682] can be applied to the facts of the present case. In the said case an advocate had challenged the transfer of a Judge. The Apex Court held that the writ petition challenging the transfer of a Judge filed by a person other than the Judge himself is not maintainable. In the present case respondent no.3 has not challenged his order of transfer directly but he is a supporting respondent. The area of justiciability in the sphere of judicial review is very well clarified by the Apex Court in the case of K ASHOK REDDY V. GOVERNMENT OF INDIA [(1994) 2 SCC 303] wherein the Apex Court has observed as under:-

> "We consider it sufficient to observe that the limited area of justiciability in this sphere being clearly declared in the Judges' case-II and also herein while making it clear that no one other than the transferred Judge himself can question the validity of a transfer ....."

37 In case of Vinay Kumar v/s State of Uttar Pradesh [(2001) 4 SCC 734] the Apex Court was dealing with a petition moved by an advocate. He was representing the accused persons whereby he has prayed invoking the jurisdiction of the High Court under Article 226 of the Constitution of India for quashing of an order passed by the District and Sessions Judge. The concerned Sessions Judge had transferred the criminal case against the accused to the Additional District and Sessions Judge / Special Judge. While dismissing the petition the Apex Court held that the petitioner had not filed the writ petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the Court. Filing of the writ petition in his own name being not part of the professional obligation of the advocate, the High Court was justified in dismissing the petition holding that the petitioner had no locus standi.

38 The Court is also not agreeable with the argument

that the transfer of respondent no.3 was an unfortunate movement either for the petitioners or for the respondent no.3 who is transferred. Of course, the observations of the Apex Court made in case of ARVIND DATTATRAYA DHANDE V. STATE OF MAHARASHTRA [(1997) 6 SCC 169] are relevant wherein the Court has observed that it is most unfortunate that the Government demoralises the officers who discharge the duties honestly and diligently and bring to book the persons indulging in black marketing and contrabanding the liquor. This is one of the eloquent cases where such a sorry state of affairs has come to light. In this decision the Apex Court was dealing with an order of Maharashtra Administrative Tribunal, Aurangabad Bench, upholding the order of transfer of the appellant. But, on facts, the Apex Court held that the transfer is nothing but a mala fide and arbitrary action at the behest of persons interested to target the honest officer. In the present case there is no iota of evidence under which this Court can hold that respondent no.3 has been transferred only with a view to snatch away the right of prisoners or to undermine them as human beings and their apprehensions expressed in the petition shall be crystallised in reality. In short, the petitioners have no case on both the counts.

39 However, Mr Oza, has, in response to the query of the Court has submitted that the jail administration is not going to reverse each decision taken by respondent no.3. On the contrary, the State Government is contemplating to take some positive actions with respect to some indirect suggestions which have been received from the grievances expressed by the prisoners and they shall be implemented in every big jail through out the State. However, the Court is not satisfied by this bare word of the learned Govt. Pleader and therefore this Court would like to following certain directions in this behalf:-

(i) The State Government shall have to concentrate on the complaints received from the jail inmates and especially from the under-trials and also of suggestions that may be received by the jail authorities from the close relatives and visitors of jail inmates. The areas should be identified where some substantial work and implementation of suggestions is required to be done and this can be divided into five main heads and sub-heads, namely, (i) health and hygiene, (ii) food, (iii) legal aid, (iv) sports and entertainment and (v) general administration and management. The complaints and suggestions can be given priority

which can be resolved or redressed on individual basis i.e. inmate-wise, barrack-wise or group-wise. For example, female prisoners can be considered as one group. The complaint or suggestion which does not involve financial implications on the budget of the jail can be given priority and each Superintendent, Jailor or Sub-Jailor should be fastened with the liability of resolving/redressing any complaint which does not involve any financial liability on the budget within a given period as may be decided by the I.G. Prison but the same should not exceed one week. The written complaints and suggestions received from the jail inmates who have been bailed out or otherwise released should be sent to I.G.Prison by the officer in-charge of the jail or prison and each inmate should be asked and encouraged to make suggestions to the authority which has either no financial implication or implication is very limited on the budget of the jail. The suggestion which needs implementation in a particular jail then the procedure to implement the suggestion should be made expeditiously. However, the suggestion or the complaint which has financial implication on the budget of the jail in particular or jail or prison through out the State be placed before the concerned authority in the Finance Department. It has come on record that certain facilities were made available to the prisoners of Sabarmati Central Prison on receipt of donation or financial help from outside or from financially rich inmates. Acceptance of donation or the infrastructural help from outside agency that too private individuals including inmates would normally put Government in an embarrassing position. The State should spend the amount in the jails where prisoners are helping in preparing food or breakfast items and the expenses determined per head should be revised every month in accordance with consumer price index.

(ii) A committee consisting of three members, of which one member must be a convict, should be formed for the purpose of purchase and storage of articles that are used for jail inmates. The term of such nominated members should be four weeks. The inmates who possess reasonable education and sufficient experience in managing the administration of any institution can be

given preference while nominating such members in the said Committee.

(iii) Regular health check-up of the jail inmates should be conducted and the said work should be entrusted to voluntary organisations. Similarly, the hygienic conditions of each barrack and toilets which are being used by the prisoners during day time should be maintained in an efficient manner and it should be made obligatory for each Jail Superintendent that the toilets should be maintained in neat and clean condition and an officer of the rank of Director of Health be authorised to inspect the sanitary conditions of the toilets, barracks, kitchen and other areas of the jail. Any complaint or suggestion made by such officer should be attended to and implemented within a period of 72 hours depending upon the exigency.

(iv) If possible, the sports events amongst the jail inmates should be held periodically and the same should be introduced with the help of voluntary organisations and Department of Education, Sports and Cultural Activities. A meeting should be convened once in three months or six months by Inspector General of Prisons and a representative from the said Department of Education, Sports and Cultural Activities should be invited to attend. Regular classes for meditation and yoga should be started and each inmate, if he is otherwise medically unfit, be asked to participate in the classes and the should be made to understand by way of audio-video visuals that this activity should be viewed as an activity relating to their mental and physical health and not a religious activity or faith. Over and above three national holidays, on festival days which are being celebrated through out the country like Budh Purnima, Diwali, Holi, Id ul Fitr, Id ul Aza, May Day i.e. 1st May, etc. the jail inmates should be served special food including sweet and such days shall have to be notified by the jail administration. As provided in the Gujarat Prisons (Director Prisons) Rules, 1975 presently sweets or Rs.3 is provided to the jail inmates on four festival days which are mentioned in the said Rules. It seems that since years this amount of Rs.3 is not probably revised. Considering the strength of the prisons, this amount should not be less than Rs.10 per head and

the days of celebration should be increased to 12 from 4. Once in every 15 days the prisoners can be served namkeen as a change. The prisoners should not be kept in any monotony because monotony life affects adversely the mental and physical strength of an individual. The State Government may decide to form a panchayat of under-trials of the equal strength i.e. 4 members and those four members can be nominated by the Superintendent or the Jailor from the under-trials and the Superintendent should see that none of the places in the Committee remain vacant for more than a week. A nominated member should be changed by rotation from the experienced and educated inmates facing trial.

(v) The tiffin service introduced under the guidance of respondent no.2 should be given a regular shape and for this purpose a scheme can be worked out and the same should be made an activity within the prison.

(vi) Removal of wire mesh by respondent no.3 at the meeting place of inmates and their relatives was viewed seriously by the State Government and the higher officials. However, by changing the side of the iron mesh and the strength the prisoners can be permitted to meet their friends and relatives and Closed Circuit Camera should be installed to monitor the meeting of the visitors with the jail inmates so that the apprehension of the State Government about transfer of any article can be taken care of.

(vii) The requirement of installation of TV, wall clocks, grilled rotating fans, flour mill, mixer-grinder and other utensils, etc. can be worked out in the background of the strength of the prisoners and each Superintendent or Jailor should be asked to place their requirement/demand and the concerned Department can purchase such items and hand over it to a particular jail and provision for a small budget as to maintenance of these articles can help in making the atmosphere of the jail healthy.

(viii) The State Government should form a Committee under the leadership of a Doctor suggested by the office bearers of the Red Cross Society with a representative from a practising dietician and this Committee should be supplied with all the

details as to standard of health of inmates and the stock of medicines kept by the jail doctors. The members of the Committed jointly or individually should be authorised to visit the jail dispensary and medical facilities and they may be authorised even to verify the quality of the medicines, date of purchase and expiry date.

(ix) A water purifier or Aquaguard and water coolers are required to be installed in any area of the jail where the strength of the prisoners is more than 300 such as canteen or near the visitors' place and it should be installed at the earliest as the temperature in State of Gujarat remains high in the months of March and June and August to October. The water purifiers/water coolers should be maintained regularly as they are maintained in General Hospital and Government Educational Institutions. The utensils and earthen pots kept for drinking water purpose should be changed thrice a year and the same should be maintained absolutely clean.

(x) Reasonable use of CaCo2, potassium permanganate, salt and chlorinated powder should be made to keep the open areas clean and for this purpose senior officials working in the health department of the State of Gujarat be deputed at regular intervals to each prison to monitor the same where the strength of the prisoners is more than 100.

(xi) The bed linen, quilts, pillows, covers, blankets, etc. should be made available to the Committee headed by the doctor nominated by the Red Cross Society for inspection on demand. If the Red Cross Society is not nominating any doctor then the Branch of Indian Medical Association, State of Gujarat, should be contacted and the name of a senior doctor who can head the committee can be obtained and such doctor can be requested to render their services as doctors of such committee looking after physical welfare, health and hygiene.

(xii) The frequency of audiovisual educational programmes should be increased.

(xiii) Infighting and quarrel amongst the inmates should be curbed with stern action and the Government should take the responsibility to compensate each

victim who sustain injury during the infighting amongst the prisoners and all under-trials and prisoners should be covered in appropriate scheme of insurance so that in case of any such eventuality or in the event of spread of epidemic they can be adquately either compensated or provided help from the outside at the cost of the State Government.

(xiv) The list of items which are permissible and kept in canteen of each Central Prison in the State can be revised adequately and certain extra items, if they are not otherwise objectionable, should be made available to the prisoners at their own cost. The coupon system which is being referred to by the learned counsel for the petitioners, Mr Mehta, be examined by the jail administration and if it is found to be convenient and is capable of preventing exploitation of physically weak inmates, then, it can be introudced. An efficient method should be introduced which will ensure that a prisoner or inmate cannot using a coupon which is not meant for him.

(xv) The Government may invite suggestions from the public i.e. from social institutions and non-governmental organisations and such suggestions received should be placed before the Committee and be discussed in the meeting to be presided over by Inspector General of Prison and they should be deliberated upon and each such institution should be informed in writing as to what has happened to their suggestion.

(xvi) The Court is in agreement with the main contention of the petitioners that each prisoner should be treated as a human being and they are entitled to live with dignity even in prison. The persons who are visiting them also should be treated with dignity by the jail administration. It is difficult for the Court to say that need for some change or betterment itself is not sufficient and it amounts to violation of Article 21 of the Constitution of India.

(xvii) The Court directs the State Government that the aforesaid suggestion, though they are not

positive directions, should be treated as a directions and to implement them. The steps that have been taken pursuant to these orders and the development that has taken place be intimated by a written report to the Registry of this Court and the Registry in its turn may place such report before the Bench which is taking up such business as per roster.

(C.K. Buch, J.)

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